

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, & Remy

From: William J. Lenkeit, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Agency Tickets – Repeal and Readoption of Regulation 18944.1 and
Adoption of Regulation 18944.3

Date: May 30, 2008

Proposed Commission Action: Approve for the publication of notice the repeal and readoption of Regulation 18944.1 and adoption Regulation 18944.3 concerning tickets given to and by state and local agencies that result in a possible gift to a public official in the agency.

Background: Continuing with the Commission's examination of gifts to agencies, which began with the recent changes to Regulation 18944.2, this review now examines a specific type of gift to an agency not covered by Regulation 18944.2. Currently, Regulation 18944.1 provides a separate rule applicable only to tickets given to an agency for use by its agency officials. Under this rule, an agency may receive free tickets for use by agency officials and their families at any event so long as the tickets are not earmarked for any individual and the agency has a written policy for distributing the tickets. If the agency has some connection with the facility, such as a public-owned facility under the jurisdiction of the agency or operated under a joint powers agency, or if the tickets are provided as part of a contract for the use of the facility or to an official to perform a ceremonial role or function at the event, the tickets may be earmarked for specific individuals. There is no limit to the number of tickets that may be received, and they are not considered "gifts" pursuant to this regulation. Therefore, the gift limit and disclosure provisions of the Act do not apply.

The Act defines a gift as: "any payment that confers a *personal benefit* on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." (Section 82028(a), emphasis added.) Staff believes the current regulation authorizes an exception that, with respect to certain types of tickets, completely swallows the limitation imposed by the Act on gifts. Unlike the basic gift to agency rule set forth in Regulation 18944.2, this regulation does not even require a specific agency or public purpose be served in order for the exception to apply. Accordingly, staff is proposing the regulation be repealed and replaced with more limited restrictions that comport with the Act's gift limitation provisions.

Proposed Regulations: Because staff is proposing numerous revisions to Regulation 18944.1, we are recommending repeal of the current regulation and adoption of a new regulation (see Attachment 1). The amendments call for narrowly tailored exceptions to the gift rules limited to tickets used in conjunction with some identified public purpose. The exceptions are crafted to provide for public disclosure when, what are essentially public assets, are passed along to specific individuals for their own personal enjoyment.

The proposed regulation would eliminate all of the current exceptions but the exception for the performance of an official or ceremonial role and that exception be limited to the admission and not include any other benefit received. All other exceptions provided must relate to a duty of the office or accomplish a public purpose for the exception to apply.

Additionally, the proposed language would now require the agency using the admission privilege post, on its website, pertinent information regarding the use of the admission by any official under the ceremonial function exception and the distribution of tickets under the public purpose exception.

Finally, staff is proposing new Regulation 18944.3, which clarifies payments for items such as food and entertainment provided to a public official by the official's agency that are not lawful uses of public funds relating to the employment relationship are considered gifts that are subject to the provisions of the Act.

Staff Recommendation: Staff recommends that the Commission approve for publication of notice the repeal and readoption of Regulation 18944.1 and the adoption of Regulation 18944.3.

Attachments:

- 1 – Repeal Regulation 18944.1 and Proposed Regulation 18944.1
- 2 – Regulation 18944.3